

Assembly Bill No. 911

CHAPTER 398

An act to amend Section 13943.1 of the Government Code, and to amend Sections 7074, 19732, 19733, 19738, and 19777.5 of, to add Section 19255 to, and to repeal Section 19737 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2005. Filed with
Secretary of State September 29, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

AB 911, Chu. Taxation: tax amnesty programs: administration.

Existing law authorizes the State Board of Control to discharge any state agency or employee from accountability for the collection of taxes, licenses, fees, or money if the debt is uncollectible or the amount of the debt does not justify the cost of its collection. Existing law authorizes a state agency not to collect these moneys if the amount involved is \$250 or less and the amount owed is uncollectible or does not justify the cost of collection.

This bill would allow the Franchise Tax Board, in addition to its existing authority to place certain taxpayer debts into inactive status, to extinguish an outstanding liability for the payment of any tax, license, fee, or other money deemed uncollectible that is due and owing to the state, if certain conditions are met.

Under existing tax law, once a tax liability becomes due and payable, a statutory lien arises for that amount upon all real and personal property belonging to that taxpayer, but no statute of limitations exists on the collection of an income or franchise tax delinquency.

This bill, for tax liabilities that are due and payable, as defined, before, on, or after July 1, 2006, would establish a statute of limitations on collections of those liabilities to limit the collection period to 20 years beginning from the last statutory lien date for each taxable year, and would extinguish that liability for that taxable year by abating the underlying tax.

Existing law imposes specified taxes, including sales and use taxes that are administered by the State Board of Equalization, and personal income and corporate taxes collected and administered by the Franchise Tax Board and requires the State Board of Equalization and the Franchise Tax Board to administer tax amnesty programs during the period beginning February 1, 2005, and ending on March 31, 2005, inclusive, or during any other 2-month period ending before June 30, 2005, as provided. Existing tax laws allow a waiver of a taxpayer's unpaid penalties and fees if the taxpayer satisfies specific criteria, including a payment of all taxes due within a specified period, and provide for the imposition of a penalty and

the revocation of that waiver if the taxpayer fails to pay any tax due for the 2005 and 2006 taxable years, as provided.

This bill would repeal the imposition of the penalty and the revocation of the waiver of penalties and fees under the Personal Income Tax and Corporation Tax Laws, as provided. This bill would also make various technical changes to the tax amnesty provisions under those laws.

Under existing tax laws, certain taxpayers are subject to a 50% amnesty penalty, which is an amount equal to 50% of the accrued underpayment interest payable for a specified period, if they have a balance due either on or after March 31, 2005, as provided. The Sales and Use Tax Law relieves a person of that 50% interest penalty if the failure to pay the tax under the amnesty program was due to reasonable cause or circumstances beyond the taxpayer's control, but it disallows any refund of that penalty.

This bill would delete the provisions that disallow a refund in those circumstances.

The Personal Income Tax and Corporation Tax Laws generally provide that an overpayment made by a taxpayer for any taxable year may be credited against the taxpayer's deficiency for any other taxable year, as specified, but do not allow a taxpayer to offset underpayments for taxable years eligible for amnesty with overpayments for other taxable years for purposes of reducing the amnesty penalty.

This bill, for purposes of computing amnesty penalties imposed on a taxpayer after March 31, 2005, would permit the taxpayer to offset an underpayment for taxable years eligible for amnesty with an overpayment for other taxable years, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 13943.1 of the Government Code is amended to read:

13943.1. (a) Except as provided in subdivision (b), a discharge granted pursuant to this chapter to a state agency or employee does not release any person from the payment of any tax, license, fee, or other money that is due and owing to the state.

(b) A discharge granted pursuant to this chapter to the Franchise Tax Board shall release a person from a liability for the payment of any tax, fee, or other liability deemed uncollectible that is due and owing to the state and extinguish that liability, if at least one of the following conditions is met:

(1) The liability is for an amount less than two hundred and fifty dollars (\$250).

(2) The liable person has been deceased for more than four years and there is no active probate with respect to that person.

(3) The Franchise Tax Board has determined that the liable person has a permanent financial hardship.

(4) The liability has been unpaid for more than 30 years.

SEC. 2. Section 7074 of the Revenue and Taxation Code is amended to read:

7074. (a) Except for taxpayers who have entered into an installment payment agreement pursuant to subdivision (b) of Section 7073, there shall be added to the tax for each period for which amnesty could have been requested:

(1) For amounts that are due and payable on the last date of the amnesty period, an amount equal to 50 percent of the accrued interest payable under Section 6591 for the period beginning on the date in which the tax was due and ending on the last day of the amnesty period specified in Section 7071.

(2) An amount equal to 50 percent of the interest computed under Section 6591 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the date in which the tax was due and ending on the last day of the amnesty period specified in Section 7071.

(b) The penalty imposed by this section is in addition to any other penalty imposed under this part.

(c) Article 2 (commencing with Section 6481) does not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

SEC. 3. Section 19255 is added to the Revenue and Taxation Code, to read:

19255. (a) Except as otherwise provided in subdivisions (b) and (c), after 20 years have lapsed from the date the latest tax liability for a taxable year or the date any other liability that is not associated with a taxable year becomes “due and payable” within the meaning of Section 19221, the Franchise Tax Board may not collect that amount and the taxpayer’s liability to the state for that liability is abated by reason of lapse of time. Any actions taken by the Franchise Tax Board to collect an uncollectible liability shall be released, withdrawn, or otherwise terminated by the Franchise Tax Board, and no subsequent administrative or civil action shall be taken or brought to collect all or part of that uncollectible amount. Any amounts received in contravention of this section shall be considered an overpayment pursuant to Section 19306 that may be credited and refunded in accordance with Section 19301.

(b) If a timely civil action filed pursuant to Article 2 of Chapter 6 of this part is commenced, or a claim is filed in a probate action, the period for which the liability is collectable shall be extended and shall not expire until that liability, probate claim, or judgment against the taxpayer arising from that liability is satisfied or becomes unenforceable under the laws applicable to the enforcement of civil judgments.

(c) For purposes of this section, both of the following apply:

(1) “Tax liability” means a liability imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, and includes any additions to tax, interest, penalties, fees and any other amounts relating to the imposed liability.

(2) If more than one liability is “due and payable” for a particular taxable year, with the exception of a liability resulting from a penalty imposed under Section 19777.5, the “due and payable” date that is later in time shall be the date upon which the 20-year limitation of subdivision (a) commences.

(d) This section shall not apply to amounts subject to collection by the Franchise Tax Board pursuant to Article 5, 5.5, or 6 of this chapter, or any other amount that is not a tax imposed under Part 10 or Part 11, but which the Franchise Tax Board is collecting as though it were a final personal income tax delinquency.

(e) (1) The expiration of the period of limitation on collection under this section shall be suspended for the following periods:

(A) The period that the Franchise Tax Board is prohibited from involuntary collection under subparagraph (B) of paragraph (1) of subdivision (b) of Section 19271 relating to collection of child support delinquencies, plus 60 days thereafter.

(B) The period during which the Franchise Tax Board is prohibited by reason of a bankruptcy case from collecting, plus six months thereafter.

(C) The period described under subdivision (d) of Section 19008 relating to installment payment agreements.

(D) The period during which collection is postponed by operation of law under Section 18571, related to postponement by reason of service in a combat zone, or under Section 18572, related to postponement by reason of presidentially declared disaster or terroristic or military action.

(E) During any other period during which collection of a tax is suspended, postponed, or extended by operation of law.

(2) A suspension of the period of limitation under this subdivision shall apply with respect to both parties of any liability that is joint and several.

(f) This section shall be applied on and after July 1, 2006, to any liability “due and payable” before, on, or after that date.

SEC. 4. Section 19732 of the Revenue and Taxation Code is amended to read:

19732. (a) For any taxpayer who meets each of the requirements of Section 19733 both of the following apply:

(1) The Franchise Tax Board shall waive all unpaid penalties and fees imposed by this part for each taxable year for which tax amnesty is allowed, but only to the extent of the amount of any penalty or fee that is owed as a result of previous nonreporting or underreporting of tax liabilities or prior nonpayment of any taxes previously assessed or proposed to be assessed for that taxable year.

(2) Except as provided in subdivision (b), no criminal action shall be brought against the taxpayer for the taxable years for which tax amnesty is

allowed for the nonreporting or underreporting of tax liabilities or the nonpayment of any taxes previously assessed or proposed to be assessed.

(b) This chapter shall not apply to violations of this part, for which, as of February 1, 2005, any of the following applies:

(1) The taxpayer is on notice of a criminal investigation by a complaint having been filed against the taxpayer.

(2) The taxpayer is under criminal investigation.

(3) A court proceeding has already been initiated.

(c) This section shall not apply to any nonreported or underreported tax liability amounts attributable to tax shelter items that could have been reported under either the voluntary compliance initiative under Chapter 9.5 (commencing with Section 19751) or the Internal Revenue Service's Offshore Voluntary Compliance Initiative described in Revenue Procedure 2003-11.

(d) No refund or credit shall be granted with respect to any penalty or fee paid with respect to a taxable year prior to the time the taxpayer makes a request for tax amnesty for that taxable year pursuant to Section 19733.

(e) Notwithstanding Chapter 6 (commencing with Section 19301), a taxpayer may not file a claim for refund or credit for any amounts paid in connection with the tax amnesty program under this chapter.

SEC. 5. Section 19733 of the Revenue and Taxation Code is amended to read:

19733. (a) This chapter shall apply to any taxpayer who satisfies all of the following requirements:

(1) During the tax amnesty program period specified in Section 19731, is eligible to participate in the tax amnesty program.

(2) During the tax amnesty program period specified in Section 19731, files a completed amnesty application with the Franchise Tax Board, signed under penalty of perjury, electing to participate in the tax amnesty program.

(3) Within 60 days after the conclusion of the tax amnesty period, does the following:

(A) (i) For any taxable year eligible for the tax amnesty program where the taxpayer has not filed any required return, files a completed original tax return for that year, or

(ii) For any taxable year eligible for the tax amnesty program where the taxpayer filed a return but underreported tax liability on that return, files an amended return for that year.

(B) Pays in full any taxes and interest due for each taxable year described in clauses (i) and (ii) of subparagraph (A), as applicable, for which amnesty is requested, or applies for an installment payment agreement under subdivision (b). For taxpayers who have not paid in full any taxes previously proposed to be assessed, pays in full the taxes and interest due for that portion of the proposed assessment for each taxable year for which amnesty is requested or applies for an installment payment agreement under subdivision (b).

(4) For purposes of complying with the full payment provisions of paragraph (3) of subdivision (a), if the full amount due is paid within the period set forth in paragraph (3) of subdivision (c) of Section 19101 after the date the Franchise Tax Board mails a notice resulting from the filing of an amnesty application or the full amount is paid within 60 days after the conclusion of the tax amnesty period, the full amount due shall be treated as paid during the amnesty period.

(5) In the case of any taxpayer that has filed for bankruptcy protection under Title 11 of the United States Code, submits an order from a Federal Bankruptcy Court allowing the taxpayer to participate in the amnesty program.

(b) (1) For purposes of complying with the full payment provisions of subparagraph (B) of paragraph (3) of subdivision (a), the Franchise Tax Board may enter into an installment payment agreement, but only if final payment under the terms of that installment payment agreement is due and is paid no later than June 30, 2006.

(2) Any installment payment agreement authorized by this subdivision shall include interest on the outstanding amount due at the rate prescribed in Section 19521.

(3) Failure by the taxpayer to fully comply with the terms of an installment payment agreement under this subdivision shall render the waiver of penalties and fees under Section 19732 null and void, unless the Franchise Tax Board determines that the failure was due to reasonable cause and not due to willful neglect.

(4) In the case of any failure described under paragraph (3), the total amount of tax, interest, fees, and all penalties shall become immediately due and payable.

(c) (1) The application required under paragraph (2) of subdivision (a) shall be in the form and manner specified by the Franchise Tax Board, but in no case shall a mere payment of any taxes and interest due, in whole or in part, for any taxable year otherwise eligible for amnesty under this part, be deemed to constitute an acceptable amnesty application under this part. For purposes of the prior sentence, the application of a refund from one taxable year to offset a tax liability from another taxable year otherwise eligible for amnesty shall not, without the filing of an amnesty application, be deemed to constitute an acceptable amnesty application under this part.

(2) The Legislature specifically intends that the Franchise Tax Board, in administering the amnesty application requirement under this part, make the amnesty application process as streamlined as possible to ensure participation in the amnesty program will be available to as many taxpayers as possible without otherwise compromising the Franchise Tax Board's ability to enforce and collect the taxes imposed under Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(d) Upon the conclusion of the tax amnesty program period, the Franchise Tax Board may propose a deficiency upon any return filed pursuant to subparagraph (A) of paragraph (3) of subdivision (a), impose

penalties and fees, or initiate criminal action under this part with respect to the difference between the amount shown on that return and the correct amount of tax. This action shall not invalidate any waivers previously granted under Section 19732.

(e) All revenues derived pursuant to subdivision (c) shall be subject to Sections 19602 and 19604.

SEC. 6. Section 19737 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 19738 of the Revenue and Taxation Code is amended to read:

19738. Any taxpayer who has an existing installment payment agreement under Section 19008 as of the start of the amnesty program, and who does not participate in the amnesty program, may not be subject to the penalty imposed under Section 19777.5 with respect to amounts payable under that agreement.

SEC. 8. Section 19777.5 of the Revenue and Taxation Code is amended to read:

19777.5. (a) There shall be added to the tax for each taxable year for which amnesty could have been requested:

(1) For amounts that are due and payable on the last day of the amnesty period, an amount equal to 50 percent of the accrued interest payable under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.

(2) For amounts that become due and payable after the last date of the amnesty period, an amount equal to 50 percent of the interest computed under Section 19101 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.

(3) For purposes of paragraph (2), Sections 19107, 19108, 19110, and 19113 shall apply in determining the amount computed under Section 19101.

(b) The penalty imposed by this section is in addition to any other penalty imposed under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(c) This section does not apply to any amounts that are treated as paid during the amnesty program period under paragraph (4) of subdivision (a) of Section 19733 or paragraph (1) of subdivision (b) of Section 19733.

(d) Article 3 (commencing with Section 19031), (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(e) (1) Notwithstanding Chapter 6 (commencing with Section 19301), a taxpayer may not file a claim for refund or credit for any amounts paid in connection with the penalty imposed in subdivision (a), except as provided in paragraph (2).

(2) A taxpayer may file a claim for refund for any amounts paid to satisfy a penalty imposed under subdivision (a) on the grounds that the amount of the penalty was not properly computed by the Franchise Tax Board.

(f) Notwithstanding Section 18415, the amendments made to this section by the act adding this subdivision shall apply to penalties imposed under paragraph (2) of subdivision (a) after March 31, 2005.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remove ambiguity from the provisions of the amnesty legislation and to provide relief to certain taxpayers that otherwise would be unreasonably penalized, it is necessary that this act take effect immediately.

SEC. 10. The amendments made by Sections 5 and 7 of this act shall be operative to the same extent as if they were included in the provisions of Chapter 226 of the Statutes of 2004.